

No. 82-1975

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1982

YOLANDE ASSAD,

Respondent.

v.

DISTRICT 1199, NATIONAL UNION OF HOSPI-
TAL AND HEALTH CARE EMPLOYEES,

Petitioner.

BRIEF BY THE RESPONDENT IN OPPOSITION TO
THE PETITION FOR WRIT OF CERTIORARI

YOLANDE ASSAD
PRO SE

40-1, THE ALBANY, Apt. 6B
WILSON, NEW YORK 11575
-147-1117

QUESTIONS PRESENTED

1.

Whether this Court's decision in Del Costello v. Teamsters, which addressed only implicit and in dictum the applicable statute of limitations for duty of fair representation/ § 301 suits which are filed in connection with grievances not taken to arbitration, should be applied retroactively to bar a suit over a grievance not taken to arbitration which was filed within the statutory period applicable at the time suit was filed?

2.

Whether, if Del Costello is to be applied retroactively, the statutory period begins to run before the union advises the employee that her grievance will not be taken to arbitration?

BRIEF OF YOLANDE ASSAD IN OPPOSITION

This statement is submitted in opposition to Local 1199's, the Petitioner herein, request for Writ of Certiorari.

Local 1199 argues that this Court should review the decision of the Court of Appeals because of their claim that a 6 month Statute of Limitations is applicable. A review of all the cases decided to date, however, indicate that a 6 month Statute of Limitations has not been found applicable in cases containing the facts of this proceeding.

A review of the record below indicates that the Union never held an arbitration proceeding or any type of formal proceeding on behalf of Yolande Assad. The record is completely devoid as to whether or not any type of real grievance was entertained by the Union inasmuch

as the Trial Court never had a hearing so as to accurately determine what actually happened. It is clear, however, that there was no arbitration or formal proceeding ever held in this case.

Most important, it is absolutely clear from the record below that the Union never informed Yolande Assad that it was not going to take this matter to arbitration. In fact, a review of the record below indicates that the Union told Ms Assad that they were going to take it to arbitration but then never told her that they changee their mind. All these arguments were raised in the Court of Appeals and in the District Court as are indicated by the papers filed below.

It is clear from the above that due to the facts stated herein this case

is not controlled by previous decisions and thus this Court should deny Writ of Certiorari.

If This Court Grants Certiorari, It
Should Remand The Case To The District
Court For Purposes Of Determining
When The Statute Of Limitations
Began To Accrue

The Court of Appeals did not have to address the issue of accrual since it utilized a 3 year Statute of Limitations. If this Court, however, should choose to accept a 6 month Statute of Limitations, the issue of accrual becomes very important. As raised in the District Court and in the Appeals Court, it is Yolande Assad's position that the cause of action against the Union could not have accrued until the Union notified her that there would be no arbitration. It is Yolande Assad's position in the

Courts below that once the Union told her that it was going to arbitrate the matter, she had every reason to rely on that representation. She in fact waited patiently for that arbitration and was never told that the matter was not going to arbitration. When she finally brought her law suit, it was, of course, over 6 months from the date of the original termination, but it is Yolande Assad's position that the Statute of Limitations was tolled since the cause of action could not accrue until Ms. Assad knew she had something to sue about. The issue of accrual is vital since without mandating a Union to let its members know affirmatively that they are not going to arbitrate a matter (particularly after they stated in

writing that they are going to arbitrate her matter), a Union could always avoid its obligation by simple holding out for a 6 month period and misrepresenting the status of its case to its members.

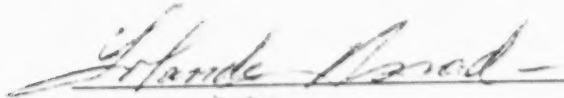
From the above, it is clear that a hearing must be held on the issue of Accrual so that the date of accrual of this cause of action can be ascertained.

The Del Costello v. International
Brotherhood Of Teamsters Case
Should Not Be Given Retroactive
Affect

It is finally submitted that the Writ of Certiorari should be denied since at the time this action was commenced, the appropriate Statute of Limitations against the Union was 3 years. It is improper to apply the Del Costello decision retroactively to this matter.

Therefore, certiorari should be
denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Yolande Assad", is written over a horizontal line.

YOLANDE ASSAD

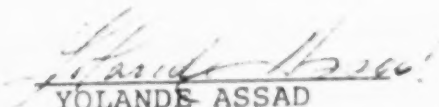
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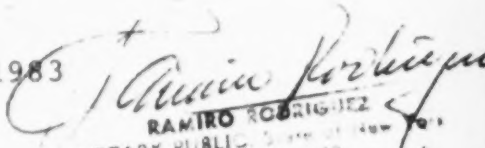
YOLANDE ASSAD, being duly sworn,
deposes and says:

On this date I served copy of
BRIEF IN OPPOSITION TO A WRIT OF CER-
TIORARI upon the below mentioned attor-
neys, who are the attorneys for 1199
Union in the herein action by placing
copies of same in an official United
States Post Office Depository.


YOLANDE ASSAD

Sworn to before me this

20th day of September 1983


RAMIRO RODRIGUEZ
NOTARY PUBLIC, State of New York
No. 41-42-222
Qualified in Queens County
Commission Expires March 30, 1984

TO: Sipser, Weinstock, Harper,
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